IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 121 of 2001.

Date of Decision: 16-6-2007

Thakur Dass. Petitioner.

Versus

Kamla Devi and another. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh , J.

Whether approved for reporting[1]? No.

For the petitioner : Mr. Ramakant Sharma, Advocate.

For the respondents : Mr. Y.P. S. Dhaulta, Advocate.

Surinder Singh, J (oral)

The instant revision petition has been directed against the order passed by learned District Judge in CMP No. 111 of 2000 decided on 29-3-2001 whereby the application moved by the petitioner under Section 5 of the Limitation Act for condoning the delay in filing the appeal was dismissed.

In brief, the facts are that the respondent No.1 had filed a suit for prohibitory injunction, with respect to the land over which there has been an apple orchard, which was resisted and contested by the petitioner and the proforma respondent denying her title. Finally, the suit of respondent No.1 was decreed on 11-1-1999 against which the petitioner filed the appeal after expiry of period of limitation and as such, an application under Section 5 of the Limitation Act was moved to condone the delay on the facts

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

mentioned in para 2 which were duly supported by affidavit of the petitioner. The reply was filed and the application was contested by the respondent No.1. The matter was taken up for consideration on this application on 29.3.2001 on which date, the petitioner filed an application under Section 151 C.P.C. requesting the Court to frame the issue, *whether there was a sufficient cause for condoning the delay* and to afford an opportunity to lead evidence but the learned District Judge declined the prayer and dismissed the application precisely on the ground that petitioner had contested the suit and the decree was passed on 11.1.1999 . He had applied for the copies on 26.4.2000 after more than a year. The copies were supplied on 29.5.2000 and the appeal was filed on 30.5.2000 thus the plea taken in the application was not accepted. He did not accept the prayer for framing the issues as requested on the reasoning that the matter would be un-necessarily prolonged further.

In the application, the petitioner has had raised some important facts which, according to him, constitute sufficient cause to condone the delay. The learned District Judge, in my opinion, ought to have framed the issue(s) as requested in order to resolve the controversy in view of the stand taken in the application to do complete justice between the parties. The matter should not have been decided in a slip shod manner which has caused a material prejudice to the petitioner.

Therefore, the impugned order is unsustainable. Accordingly, it is set aside and the case is remanded back to the District Judge with a direction to frame the issue (s) and dispose of the application in accordance with law after giving reasonable opportunity to both the parties to prove their contentions.

The parties are hereby directed to be present before the

District Judge on 27-7-2007 on which date, issue (s) shall be framed by him and thereafter a date shall be fixed for recording the evidence of the parties. Therefore, the matter shall be disposed of according to law.

The Registry shall return the record of the court below so as to reach the District Judge Kullu well before the date fixed before him. The revision petition accordingly stands disposed of.

(Surinder Singh)
Judge.

June 16,2007.
(bm)